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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

WAYNE HENDERSON, *an individual*, and DENISE HENDERSON, *an individual*,
Plaintiffs,
v.

CALIFORNIA RESOURCES CORPORATION, *a Delaware Corporation*; CALIFORNIA RESOURCES PRODUCTION CORPORATION, *a Delaware Corporation*; CHEVRON USA, INC., *a Pennsylvania Corporation*; and JOHN DOES 1 – 9.
Defendants.

Case No: 2:17-cv-00455-VAP-JC

JOINT RULE 26(f) REPORT

[Fed. R. Civ. P. 26(f); L.R. 26-1]

Scheduling Conf.: May 1, 2017
Conf. Time: 1:30 p.m.
Courtroom: 8A

Hon. Beverly Virginia A. Phillips
United States District Court

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Plaintiff Wayne Henderson and Plaintiff Denise Henderson (collectively, "Plaintiffs"), and Defendants California Resources Corporation ("Defendant CRC"), California Resources Production Corporation ("Defendant CRPC") and Chevron USA, Inc. ("Defendant Chevron") (collectively "Defendants") met and conferred on April 10, 2017, per the Court's Order of February 22, 2017 (ECF No. 15) to discuss issues addressed in the parties Joint Rule 26(f) Report. The parties, by and through their counsel of record, hereby jointly report as follows:

A. STATEMENT OF THE CASE

The parties agree that this is a Jury Case and that a Jury Demand has been timely requested.

B. SUBJECT MATTER JURISDICTION

This diversity action is brought pursuant to 28 U.S.C. §§ 1332 et seq., that the Plaintiffs are residents of the State of Alabama and that Defendant Chevron is a Pennsylvania Corporation with offices in San Ramon, California and conducts business in the County of Los Angeles, California, and that Defendants CRC and CRPC are Delaware Corporations that conduct business in the County of Los Angeles, California, and that the amount in controversy exceeds $75,000.

C. LEGAL ISSUES

This action arises out of the acquisition of the serious form of coccidiodomycosis (also known as "valley fever" or "cocci"). Plaintiff Wayne Henderson maintains that he was brought by Defendants to work on McKittrick Oil Fields, was not warned about the presence of the spores that cause the illness, and that the Defendants failed to implement the customary and available preventative measures designed to protect individuals from acquiring the disease and, especially, individuals of African descent, such as Plaintiff Wayne Henderson, who are up to fourteen (14) times more likely to develop the serious and terminal form of the disease. Plaintiff Wayne Henderson asserts that as a result of Defendants' negligence, Plaintiff Wayne Henderson acquired the more serious form of coccidiodomycosis, and as a result, has undergone surgeries, incurred (and will continue to incur) tremendous medical expenses, and – following a lifetime of gainful employment – has lost his capacity to work. Plaintiff Wayne Henderson also maintains that – as a result of the severity of his infection – he has incurred (and will continue to incur) substantial documented pain and suffering.

Plaintiff Wayne Henderson alleges that Defendants are the owners, operators, managers, or otherwise control the McKittrick Oil Fields, and has asserted two causes of action against all Defendants, both sounding in negligence. Plaintiff Wayne Henderson has asserted one cause of action for failure to warn and failure to protect, and a second cause of action for premises liability. Plaintiff Denise Henderson has asserted a claim of loss of consortium against all Defendants.

Defendants deny Plaintiffs' allegations. Defendant Chevron maintains that Chevron, at no time, contracted with Plaintiff Wayne Henderson's employer to perform work at Chevron's McKittrick facility. Chevron also denies that Plaintiff Wayne Henderson worked at Chevron's McKittrick facility and has no record of either Plaintiff Wayne Henderson or his employer working at Chevron's McKittrick facility. CRC maintains facilities separate and apart from those owned and operated by Chevron, and it appears that Plaintiff worked at CRC's facilities but not at Chevron's facilities.

Defendants CRC and CRPC maintain that they owed no duty to Plaintiffs. Defendants CRC and CRPC further maintain that there is no causal connection between their actions and Plaintiff Wayne Henderson's illness or disease. CRC and CRPC took all appropriate measures and precautions to warn and protect persons working on their property or on their behalf from airborne dust to the greatest extent possible. CRC and CRPC had no knowledge of what persons (or the race of such persons) Plaintiff Wayne Henderson's employer Environmental Waste Minimization, Inc. ("EWMI") employed to perform EWMI's contractual duties. Defendants

CRC and CRPC maintain that all duties regarding safety were delegated to Plaintiff Wayne Henderson's employer by contract.

D. PARTIES, EVIDENCE, ETC.

1. PLAINTIFFS' PARTIES AND EVIDENCE

Plaintiff Wayne Henderson and Denise Henderson are residents of the State of Alabama. Plaintiff Wayne Henderson was infected during the past year. Defendants are presently in possession of information relating to Plaintiff Wayne Henderson's reasons for arriving at McKittrick Oil Fields, the dates of his infection, and the dates where Defendants first provided warnings to Plaintiff Wayne Henderson about the risk of acquiring cocci at the McKittrick Oil Fields (Plaintiffs maintain this occurred after he was already infected).

Plaintiffs have provided counsel for Defendants, in Plaintiffs' Initial Disclosures, with Plaintiff Wayne Henderson's medical records to date and the names of some of Plaintiff Wayne Henderson's medical providers who may testify at trial, and some of the family members and friends of Plaintiff Wayne Henderson who may testify as to the physical impact that the illness had on Plaintiff Wayne Henderson's body.

Plaintiffs anticipate providing further proof of the impact Plaintiff Wayne Henderson's acquisition of cocci, in addition to expert opinions on, *inter alia*, Plaintiff Wayne Henderson's damages (medical and loss of earnings) and expert opinions on the standard of care of employers in the area surrounding McKittrick Oil Fields to warn and protect against invitees becoming infected with cocci.

2. DEFENDANTS CRC AND CRPC'S PARTIES AND EVIDENCE

Defendants CRC and CRPC are Delaware corporations operating in the oil industry in California. CRC (or CRPC) utilized all precautions and provided all warnings standard in the industry concerning airborne spores. CRC and CRPC will provide such evidence that its subcontractors were made aware of airborne spores and directed to take appropriate precautions accordingly.

3. DEFENDANT CHEVRON'S PARTIES AND EVIDENCE

Chevron, if not dismissed from this litigation, anticipates that employee Darren Walwrath will testify that neither Plaintiff Wayne Henderson nor his employer ever worked at Chevron's McKittrick facility. He will also testify that contractors, such as Plaintiff Wayne Henderson's employer, were responsible for providing Personal Protective Equipment (PPE) to their employees and that Chevron does not provide PPE to contractors' employees.

Chevron employee Alanna Rolow is Chevron's occupational hygiene specialist. She will likely testify regarding the responsibility of Chevron's contractors to provide PPE to their employees.

E. DAMAGES

1. PLAINTIFFS' ASSESSMENT OF DAMAGES

Plaintiff Wayne Henderson alleges to have suffered substantial injuries, currently undergoing treatment, and will require lifelong care. Plaintiff Wayne Henderson has not been able to return to work since the progression of his illness and it is not apparent when, if at all, he will be able to return to work. Plaintiff Wayne Henderson and Plaintiff Denise Henderson have suffered substantial out-of-pocket expenses in relation to Plaintiff Wayne Henderson's medical care. Plaintiffs are seeking special and general damages in an amount to be proven at trial. Plaintiffs are seeking punitive damages against the Defendants.

2. DEFENDANTS' ASSESSMENT OF DAMAGES

Defendants deny any liability and deny that any damages are due and owing to Plaintiffs.

F. INSURANCE

CRC and CRPC have tendered Plaintiffs' claims to their insurance carrier and will provide relevant insurance information to Plaintiffs.

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G. MOTIONS

1. PLAINTIFFS' ANTICIPATED MOTIONS

At this stage, Plaintiffs are not aware of which of the Defendants, or other parties (if any), bore responsibility for the warnings, implementation of preventative measures, and management of the site where Plaintiff Wayne Henderson became infected. Plaintiffs anticipate either adding or dismissing parties once this information becomes available during discovery. Plaintiffs do not, at this time, anticipate the further filing of motions but reserves all rights to do so.

2. DEFENDANTS' ANTICIPATED MOTIONS

CRC and CRPC are considering filing a motion for transfer of venue to the Eastern District of California based on forum non conveniens.

Chevron intends to file a Motion for Summary Judgment based on Plaintiffs' inability to establish that Chevron owed a legal duty to Plaintiffs as Plaintiff Wayne Henderson did not perform work at Chevron's McKittrick facility and Plaintiff Wayne Henderson's employer was never engaged by Chevron to perform work at Chevron's McKittrick facility.

H. MANUAL FOR COMPLEX LITIGATION

The parties agree that this action is not a complex matter and, thus, does not warrant utilization of procedures from the Manual for Complex Litigation.

I. STATUS OF DISCOVERY

1. PLAINTIFFS' DISCOVERY STATUS

Pursuant to the Court's Order of February 22, 2017 (ECF No. 15), Plaintiffs provided initial disclosures to Defendants on or about April 17, 2017. Plaintiffs will propound discovery demands following the scheduling conference.

2. DEFENDANTS' DISCOVERY STATUS

The parties have agreed that CRC and CRPC may provide initial disclosures within 14 days after the scheduling conference in order to provide sufficient opportunity to identify witnesses and documents.

Chevron will propound discovery regarding Plaintiff Wayne Henderson's contention that he worked at Chevron's McKittrick facility and will propound discovery regarding causation and damages jointly with the other Defendants.

J. DISCOVERY PLAN

Per the Court's Order of February 22, 2017, each party has submitted a proposed discovery plan relying on the "EXHIBIT A: SCHEDULE OF PRETRIAL AND TRIAL DATES" annexed to that order.

K. DISPOSITIVE MOTIONS

1. Plaintiffs' Position

Plaintiffs do not anticipate filing any potentially-dispositive motions at this time.

2. Defendant Chevron's Position

Chevron, if not dismissed by Plaintiffs, will file a dispositive motion.

3. Defendants CRC and CRPC's Position

CRC and CRPC anticipate filing motions for summary judgment.

L. SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION

No settlement discussions have occurred as yet. The parties have agreed to satisfy their ADR obligations before the magistrate judge assigned to this matter.

M. TRIAL ESTIMATE

Plaintiffs estimate that this trial will take five (5) days.

Defendants CRC and CRPC estimate that this trial will take seven (7) to ten (10) days.

Defendant Chevron estimates that this trial will take six (6) to eight (8) days.

N. TRIAL COUNSEL

1. **Plaintiffs'** Trial Counsel: Ian Wallach shall represent Plaintiffs during trial. Peter J. Weinberger is expected to be co-counsel.
2. **Defendant CRC and CRPC** Trial Counsel: William A. Bruce shall represent CRC and CRPC at trial. Christopher E. Dominguez is expected to be co-counsel.

Michael E. Gallagher and Paul D. Rasmussen are also expected to act as co-counsel.

3. **Defendant Chevron** Trial Counsel: Charles L. Harris.

O. INDEPENDENT EXPERT OR MASTER

The parties at present do not anticipate the need for an independent expert or master.

P. TIMETABLE

The parties are submitting herewith a SCHEDULE OF TRIAL AND PRETRIAL DATES.

Q. OTHER ISSUES

1. Additional Parties & Claims

a. Plaintiffs' Additional Parties and Claims

Plaintiffs are not presently aware of any additional parties, but reserves the right to assert claims against any parties who may bear liability of whom Plaintiffs learn of during discovery.

b. Defendants CRC and CRPC Additional Parties and Claims

CRC and CRPC reserve the right to assert cross-complaints for contractual indemnity and breach of contract against Plaintiff Wayne Henderson's employer EWMI.

c. Defendant Chevron's Additional Parties and Claims

Defendant Chevron does not currently anticipate adding any parties to this action but reserves it rights to do so should facts be discovered which warrant such action.

2. Electronic Discovery

The parties agree that for any electronically stored information that such information may be produced in tangible form in an organized manner on CDs or DVDs in readable format for standard programs for Windows-based operating systems (*e.g.*, Microsoft Windows, Adobe Acrobat, etc.). In addition, at the election of a party, with the consent of the other party, not to be unreasonably withheld, and considering the volume of information to be exchanged, the producing party may elect to produce such information by printing the files as documents and

Bates numbering the documents. In any event, the parties agree to produce information in a manner such that it maybe be easily reviewed and identified by the receiving party and the Court.

3. Magistrate Judge

The Plaintiffs agree to proceed before a Magistrate Judge for all purposes in this matter.

CRC and CRPC do not agree to proceed before a Magistrate Judge for all purposes in this matter.

4. Severance & Bifurcation

The parties do not anticipate the necessity of any proposals regarding severance, bifurcation, or other specific order of proof, except that if punitive damages are sought by Plaintiffs at the time of trial, Defendants will seek bifurcation of these issues.

5. Protective Order

Plaintiffs have not requested or sought a protective order.

CRC and CRPC reserve the right to seek a protective order.

DATED: April 24, 2017

LAW OFFICES OF IAN WALLACH, PC

By: *\/s/ Ian Wallach*
IAN WALLACH
Attorneys for Plaintiffs

DATED: April 24, 2017

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DATED: April 24, 2017

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